IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 45 of 1988

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SONI GIRDHAR RAJA

Versus

VYAS BHAGWANJI BECHAR

Appearance:

MR HARIN P RAVAL for Petitioner

NOTICE SERVED for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 08/12/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the petitioner-original defendant tenant, who seeks to challenge the judgement and decree of eviction passed by the rent court under the provisions of the Bombay Rent Act, which was confirmed by the lower appellate court.

2. The plaintiff landlord had sued the petitioner defendant-tenant for a decree of eviction under the provisions of the Bombay Rent Act on the ground that the defendant-tenant was in arrears of rent for more than six months and had neglected or omitted to pay the same in spite of the demand made by the statutory notice under section 12(2) of the said Act.

3. The trial court, after appreciating the evidence on record, found from the documentary evidence on record that admittedly the tenant was in arrears of rent for more than six months, and further found on the basis of other oral and documentary evidence on record, that the tenant was not ready and willing to pay the rent, and had further neglected or omitted to pay the rent within 30 days of the receipt of the statutory notice under section 12(2) of the Act, and that therefore, since the provisions of section 12(3)(a) of the said Act applied to the facts of the case, the court had no option but to pass a decree for eviction.

4. The tenant thereupon preferred an appeal to the lower appellate court under section 29(1) of the Bombay Rent Act. On a complete reappreciation of the evidence on record the lower appellate court confirmed the findings of fact recorded by the trial court and dismissed the appeal by confirming the decree of eviction passed by the trial court. Hence the present revision under section 29(2) of the Bombay Rent Act.

5. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

6. Only a few salient features require to be noted. The landlord has averred and the defendant-tenant has not denied the assertion that the contractual rent in respect of the premises was Rs.7.50 per month. The case of the landlord was that the defendant-tenant was in arrears of rent for a period of 47 months from 1st August 1977 to 30th June 1981 on the date of the suit notice. These are also the averments made in the statutory notice under section 12(2) of the said Act dated 23rd June 1981 at Exh.14. When this claim on the part of the landlord was not met or satisfied by the tenant in respect of the suit notice, the landlord filed the suit for eviction on the aforesaid grounds and facts.

7. The defendant filed his written statement at Exh.9 in the suit and contended that he was required to tender rent to the plaintiff every month, but the plaintiff used to refuse to accept the same, and he was therefore obliged to send the rent by money orders which were also refused by the plaintiff. The specific contention raised in the written statement was to the effect that the arrears of rent amounting to Rs.398.50 for the period from 1st August 1977 to 31st December 1981 was sent to the plaintiff-landlord by demand draft (along with his reply to the suit notice at Exh.16). The defendant then contended in his written statement that even this demand draft was not encashed by the plaintiff-landlord. The defendant, therefore, averred that although he was in arrears of rent on the date of receipt of the suit notice, he was always ready and willing to pay the rent and therefore the plaintiff is not entitled to a decree for eviction. In his written statement the defendant-tenant also raised a dispute as to standard rent.

8. It is pertinent to note that the claim of the plaintiff-landlord as made in the suit notice was in respect of arrears of 47 months for the period from 1st August 1977 to 31st June 1981, as against which the defendant claims to have met this demand by sending a demand draft for Rs.398.50 for the period from 1st August 1977 to 31st December 1981. This averment clearly establishes that on the date of receipt of the suit notice the defendant was in fact in arrears of rent for at least 47 months (as contended by the landlord). This is also established from the fact that the defendant's contention in the written statement is of having sent the demand draft for an amount larger than the claim made in the suit notice for a longer period.

9. The defendant's version propounded in his written statement at Exh.9 has been disbelieved by both the courts below on the basis of the factual evidence on record.

9.1 Firstly it is established on a plain reading of Exh.16, that the reply sent by the defendant-tenant at Exh.16 to the landlord's statutory notice at Exh.14, was not in fact sent by him personally, but was sent on his behalf by his daughter Pravina. Secondly, this reply at Exh.16 merely contains the statement that the demand draft referred to hereinabove was enclosed with the said reply. However, the landlord's case which is proved by evidence, is that the said reply at Exh.16 did not contain any demand draft at all, inasmuch as the landlord has immediately protested by his counter reply dated 3rd July 1981 (Exh.17) that no such bank draft was enclosed by the defendant in his reply to the suit notice, and no such bank draft has been received by him (the landlord). Inspite of this specific assertion made by the landlord as to non-receipt of the bank draft, the tenant took no further action, did not reply to the landlord's letter of protest at Exh.17, neither did he make inquiries with his daughter Pravina or with the bank authorities.

10. There is no doubt that the defendant-landlord has established by examining the officers of the bank which issued the demand draft, that in fact such demand draft had been purchased by the defendant-tenant. However, there is absolutely no evidence whatsoever to indicate that such draft was either received by the landlord along with the defendant's letter Exh.16 or that the landlord had encashed such a draft.

11. It requires to be noted, as emphasized by both the courts below, that when the landlord protested by Exh.17 that no demand draft was enclosed with the defendant's reply at Exh.16, the tenant took no further action. The tenant did not even reply to the landlord. The tenant could have examined the officers of the bank where the tenant-landlord had his bank account to establish whether the landlord had paid such draft into his account or not. Furthermore, the defendant-tenant could have examined the appropriate officers of the bank to establish that the draft issued by his own bank had been cleared and paid into any account of the plaintiff-landlord by that branch of the bank upon which the draft was drawn and issued. The tenant could have examined his daughter Pravina to prove that she had enclosed the Draft along with the covering letter at Exh.16. Yet, Pravina has not been examined. In other

words, the defendant-tenant has rested content only by proving that he had purchased the draft, but has made no further attempt to establish that the said draft was encashed by any party whatsoever, let alone the plaintiff-landlord.

12. Both the courts below have rightly found that the tenant could also be said as not ready and willing to pay the rent since only one money order for Rs.15/- was sent by the tenant on 16th November 1977, on which day he was admittedly in arrears from 1st August 1977 to 30th June 1981. It is pertinent to note that this amount of Rs.15/- covers rent of only two months. Since the landlord has proved his arrears from 1st August 1977 to 30th June 1981, on 16th November 1977 three months rent was due, as against which a money order of only Rs.15/- was sent representing two months. The landlord was, therefore, justified in reusing part payment of the arrears of rent.

13. Even otherwise the defendant-tenant is required in law to establish that he was ready and willing to pay the entire arrears of rent, as they stood on the date of suit notice. As aforesaid, no other money order apart from the one referred to above was sent by the defendant-tenant, and tender of the total arrears of rent by demand draft has not been established.

14. It is pertinent to note that the tenant has not raised any dispute as to standard rent in his reply to the statutory notice issued by the landlord, nor has such a dispute been raised within 30 days of the receipt of statutory notice by filing an application under section 11(3) of the said Act. The tenant has raised this dispute only in his written statement. In view of the well settled position in law, raising a dispute only in the written statement will not suffice to take the tenant's case out of the purview of section 12(3)(a) of the said act.

15. Once it is found that the case is covered under section 12(3)(a) of the said Act, and it is further found that the defendant-tenant has not met or satisfied the demand as to the total arrears of rent within 30 days of the receipt of the statutory notice, the court has no option but to pass a decree for eviction.

16. In the premises aforesaid, the judgement and decree of the trial court passing a decree for eviction against the tenant is eminently justified, and has been rightly confirmed by the lower appellate court. There

is, therefore, no substance in the present revision application and the same is, therefore, dismissed. Rule is discharged with costs. Interim relief stands vacated.

17. At this stage learned counsel for the petitioner seeks extension of the interim relief operative so far with a view to approach the Supreme Court. For this specific purpose the interim relief is extended upto 2nd February 2001 with the specific understanding that no extension shall be granted.

18. Yadi to the respondent.

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